

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED
APR 27 2007
JOHN F. CORCORAN, CLERK
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F. C. 'ville'

MICHAEL O'DANIEL,

Plaintiff,

v.

EXECUTIVE IN CHARGE OF THE LOCAL OFFICE
AT CHARLOTTESVILLE, VA AND I. R. STEVENS,
REVENUE OFFICER

Defendants

CIVIL No. 3:07cv00018

ORDER and OPINION

JUDGE NORMAN K. MOON

This matter is before the Court on Plaintiff's Motion to Dismiss, filed on April 25, 2007 (docket entry no. 7). The Court will construe Plaintiff's motion as a stipulation of dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure. Rule 41(a)(1)(i) states that "an action may be dismissed by the plaintiff without order of court ... by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." Fed. R. Civ. P. 41(a)(1)(i). Here, Defendants have not yet filed an answer or a motion for summary judgment. As such, Plaintiff may dismiss this action without court order. This dismissal is without prejudice unless Plaintiff has "once dismissed in any court of the United States or of any state an action based on or including the same claim." See Fed. R. Civ. P. 41(a)(1).

For the foregoing reasons, Plaintiff's motion is hereby GRANTED, this case is DISMISSED WITHOUT PREJUDICE, and the clerk is ordered to STRIKE this case from the Court's docket.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

ENTERED:

Norma L. Mar
United States District Judge

April 27, 2007
Date